Magic Moments
in Archaeological Heritage Protection

Looting must be prevented at any cost!

Must looting be prevented at any cost?

What is looting, anyway?
It is against the law!

• prohibitions against **unpermitted fieldwork**
  – found in almost all European heritage laws
    • usually at least of 'monuments‘, or even all 'archaeology’
      – N.B. → not all 'archaeology’ is necessarily also a 'monument’
  – normally, as a **general prohibition**
    • e.g. '... excavations and any other research with the intent to discover monuments is only allowed with a permit by ...’

• prohibitions against **not reporting finds**
  – especially chance finds of (potential) 'monuments’
  – normally, phrased as a **general duty**
    • e.g. 'if finds are made that could be monuments, the finder must report them immediately to ...’
It is against the law!

- prohibitions against **unpermitted finds removal**
  - in many European heritage laws
    - also at least of 'monuments‘, or even all 'archaeology‘
  - normally, also a **general prohibition**
    - e.g. ‘... any finds made have to be left undisturbed until inspected by ...‘

- **non-compliance** with all this is punishable
  - usually at least with a **hefty fine**
    - fines threatened: a few **thousand** to **half a million** Euros
    - fines imposed: a few **hundreds** and a few **thousand** Euros
  - increasingly, also **imprisonment** threatened
    - virtually **never imposed**
But so is jaywalking!

- I would, if course, never compare
  - unpermitted extraction of finds (‘looting‘)
  - with jaywalking

  – in terms of their potentially adverse affects
  - ‘looting‘ can cause damage to archaeology
  - jaywalking, can cause loss of human life
  - I hope we all agree on what is more harmful!

- Still, almost everyone occasionally jaywalks

- self-assessment:
  Will I be harmed or harm others?

  Hardly anyone would jaywalk
  Almost everyone would jaywalk
Should I stay or should I go?

- **assessment** of **risk** of actions depends on

  - the **probability** of an(y) effect being caused
  
  - the **values subjectively assigned** by the actor
  
  - the **overall significance** of likely adverse effects

  - and the **likelihood** that the adverse effects
    
    - primarily to the actors themselves
    
    - secondarily to people they care about
    
    - only thirdly to the common good

  **outweigh** the **benefits** likely to be **gained** from it

- **risk** is (always) **assessed ex ante** (= predicted)
Should I stay or should I go now?

- **Reliability** of general predictions depends on
  - e.g. for jaywalking, **knowledge** of
    - how much traffic is there on average?
    - at what speeds is traffic moving on average?
    - how quickly do jaywalker cross a road on average?
    - etc.

- and, for **specific predictions**, highly depends on:
  - e.g. for jaywalking, **specific conditions** (variables)
    - how much current traffic is there on the particular road?
    - how fast is that traffic currently moving on it?
    - how fast can the particular jaywalker run?
    - etc.
Harm-risk self-assessment in 'looting' 

• problematic for **general legal prohibitions**
  
  – require **general harm-risk self-assessment**
  
  – by **'non-professional'** members of the public
    • variable, but generally **low**, level of **knowledge** about
    • subjective assignment of **'non-professional'** values, e.g.
  
  – not helped by **confusing legislation and advice**
    • e.g.: what is a **monument**' worthy of protection?
      » e.g. Austrian definition of **monument**: 
        ,*a manmade object or its remains or traces, which is considered significant by dominant expert opinion'*
      » **requires** not only **expert knowledge** of what is **significant**
      » but also **judgement** which **expert opinion** is **'dominant'**
self-assessment from a ‘looter’s’ perspective

- At the level of **general predictions**
  - **Likelihood** actions will have any effect?
    - **very low**:
      - finds made will most likely be rubbish
      - which will be left behind where found even if disturbed
  - **Values** of the affected, effects, and my actions?
    - vast majority of finds will be worthless rubbish (**low value**)
    - ‘good’ finds ‘rescued’ from destruction (**highly beneficial effect**)
    - own actions are beneficial to actor and others (**positive value**)
  - Likely **significance** of adverse effects?
    - **extremely low to non-existent**:
      - finds almost exclusively extracted from topsoil
      - which is regularly removed by mechanical digger by archaeologists
  - **Balance** between adverse and beneficial effects?
    - **highly beneficial to actor** and friends, slightly to others
    - **minimal adverse effects**, if at all, only **to remote ‘others’**

→ planned finds extraction will be assessed to be **harmless**
Magic moment 1: discovery

- only once **specific circumstances** of find are known, self-**assessment** becomes **reliable**
  
  = **moment of discovery**
  
  - **likelihood** that find will be **affected** = 100%
  - **value** of find becomes apparent
    - true even in professional **value assessment**: only ex post!
  - **adverse effects** of extraction become **apparent now**!
  - **balance** more likely to be **negative** now

  → much more likely to identify activity as **harmful**

- But, if **generally prohibited**, it is **too late** now:
  - 'looter‘ has already **committed** a 'heritage crime'
  - any **damage** can only be **minimised** by **recording**
Magic moment 2: recording & reporting

• ‘looter‘ now has to decide
  – whether to record & report find
  – or just dig it up and keep whole event secret

• if ‘looting‘ is generally prohibited,
  – recording & reporting the find means
    • creating evidence of his ‘heritage crime‘
    • self-reporting (confessing to) the offence committed
    • and thus likely face punishment
      = suffer harm as a result if his actions
  – not recording & reporting and keeping the find means
    • in all likelihood escaping punishment
    • and probably gaining possession of the find
      = benefit from his action

• who records & reports themselves for jaywalking?
The psychology of legal compliance

- **general prohibitions against 'looting’**
  - affect the 'looters’ decision-making
    - firstly at the wrong point in time
      - too early = before the 1st 'magic moment’
      - when reliable self-assessment of harm-risk is impossible
    - and then, secondly, in the wrong way
      - in the 2nd 'magic moment’
      - when decision is made whether or not to record & report
      - where the general prohibition of 'looting’ strongly encourages
        » non-recording & not reporting
        » the secretive, non-professional extraction of the find ex situ

- the **cost of preventing 'looting’ at any cost**
  - is not the prevention of 'looting’ at all
  - but the prevention of recording & reporting finds
→ **self-inflicted harm** to archaeology!
Thank you for your attention!

- some statistics about archaeologically observed **looting** damage in Austria
  - \( n = 1,923 \) **professional** archaeological fieldwork projects
    - all **professional** fieldwork in Austria, 2013-2015, as reported by BDA in the annual finds reports
      - c. 10 % of all **professional** fieldwork conducted in Austria since 1850

- 5 cases of **looting** stratigraphically observed (0.26%)
  - in 4 of them because the **looting** had caused the initiation of fieldwork in the particular spot
  - extent in almost all cases miniscule (<0.01% of site affected)
  - stratigraphic damage in all cases minimal
  - damage to interpretability of site virtually nonexistent

- 1 case of **unrecorded** **professional** 19th-20th century excavation observed (0.05%)
  - extent significant (5x7 m complete excavation)
  - stratigraphic damage substantial
  - damage to interpretability of site limited
  - total damage greater than that of all 5 observed **looting** cases combined

- 89 BDA-permitted **professional** fieldwork projects did not submit report (4.63%)
  - despite compulsory by law, effectively same offence as non-reporting in **looting** cases
  - presumably, extent of damage substantial (not quantifiable)
  - presumably, stratigraphic damage massive (~ 100% destroyed)
  - presumably, damage to interpretability of site massive (~ 100% potential lost)

- What is **looting**, and who are the real **looters**?